Reference No.: 27
Barite Hill/Nevada Goldfields
HRS Documentation Record
EPA ID No. SCN000407714



Home > Code of Laws Title/Chapter List > Title 48

South Carolina Code of Laws (Unannotated) Current through the end of the 2006 Regular Session

DISCLAIMER

The South Carolina Legislative Council is offering access to the unannotated South Carolina Code of Laws on the Internet as a service to the public. The unannotated South Carolina Code on the General Assembly's website is now current through the 2006 regular session. The unannotated South Carolina Code, consisting only of Code text and numbering, may be copied from this website at the reader's expense and effort without need for permission.

The Legislative Council is unable to assist users of this service with legal questions. Also, legislative staff cannot respond to requests for legal advice or the application of the law to specific facts. Therefore, to understand and protect your legal rights, you should consult your own private lawyer regarding all legal questions.

While every effort was made to ensure the accuracy and completeness of the unannotated South Carolina Code available on the South Carolina General Assembly's website, the unannotated South Carolina Code is not official, and the state agencies preparing this website and the General Assembly are not responsible for any errors or omissions which may occur in these files. Only the current published volumes of the South Carolina Code of Laws Annotated and any pertinent acts and joint resolutions contain the official version.

Please note that the Legislative Council is not able to respond to individual inquiries regarding research or the features, format, or use of this website. However, you may notify Legislative Printing, Information and Technology Systems at LPITS@scstatehouse.net regarding any apparent errors or omissions in content of Code sections on this website, in which case LPITS will relay the information to appropriate staff members of the South Carolina Legislative Council for investigation.

Title 48 - Environmental Protection and Conservation

CHAPTER 20.

SOUTH CAROLINA MINING ACT

SECTION 48-20-10. Short title.

This chapter may be cited as the "South Carolina Mining Act".

SECTION 48-20-20. Legislative purpose.

The purposes of this chapter are to provide that:

- (1) the usefulness, productivity, and scenic values of all lands and waters involved in mining within the State receive the greatest practical degree of protection and restoration;
- (2) no mining may be carried on in the State unless plans for the mining include reasonable provisions for protection of the surrounding environment and for reclamation of the area of land affected by mining.

SECTION 48-20-30. Department responsible for administration of chapter.

The South Carolina Department of Health and Environmental Control is responsible for administering the provisions and requirements of this chapter. This includes the process and issuance of mining permits, review and approval of reclamation plans, collection of reclamation performance bonds, conduct of environmental appraisals, technical assistance to mine operators and the public, implementation of research and demonstration projects, and inspections of all mining operations and reclamation as set forth in this chapter. Proper execution of these responsibilities may necessitate that the department seek comment from other relevant state agencies regarding matters within their respective areas of statutory responsibility or primary interests. The department has ultimate authority, subject to the appeal provisions of this chapter, over all mining, as defined in this chapter, and the provisions of this chapter regulating and controlling such activity.

SECTION 48-20-40. Definitions.

As used in this chapter:

- (1) "Mining" means:
- (a) the breaking of the surface soil to facilitate or accomplish the extraction or removal of ores or mineral solids for sale or processing or consumption in the regular operation of a business;
- (b) removal of overburden lying above natural deposits of ore or mineral solids and removal of the mineral deposits exposed, or by removal of ores or mineral solids from deposits lying exposed in their natural state.

Removal of overburden and the mining of limited amounts of ores or mineral solids are not considered mining when done only for the purpose of determining location, quantity, or quality of a natural deposit if no ores or mineral solids removed during exploratory excavation or mining are sold, processed for sale, or consumed in the regular operation of a business and if the affected land does not exceed two acres in area. Mining does not include plants engaged in processing minerals except as the plants are an integral on-site part of the removal of ores or mineral solids from natural deposits. Mining does not include excavation or grading when conducted solely in aid of on-site farming or of on-site construction. Mining does not include dredging operations where the operations are engaged in the harvesting of oysters, clams, or the removal of shells from coastal bottoms.

(2) "Council" means the Mining Council created by Sections 48-21-10 and 48-21-20.

- (3) "Department" means the South Carolina Department of Health and Environmental Control. Whenever in this chapter the department is assigned duties, they may be performed by the director or by subordinates as he designates.
- (4) "Minerals" means soil, clay, coal, stone, gravel, sand, phosphate, rock, metallic ore, and any other solid material or substance found in natural deposits on or in the earth.
- (5) "Affected land" means:
- (a) the area of land from which overburden or minerals have been removed or upon which overburden has been deposited, or both, including an area on which a plant is located which is an integral part of the process of the removal of ores or mineral solids from natural deposits; or
- (b) stockpiles and settling ponds located on or adjacent to lands from which overburden or minerals have been removed.
- (6) "Neighboring" means in close proximity, in the immediate vicinity, or in actual contact.
- (7) "Termination of mining" means cessation of mining operations or a segment of a mining operation with intent not to resume, or cessation of mining operations or a segment of a mining operation as a result of revocation of an operating permit. Whenever the department has reason to believe that a mining operation or a segment of a mining operation has terminated, it shall give the operator written notice of its intention to declare the operation or segment of the operation terminated, and he has an opportunity to appear within thirty days and present evidence that the operation or segment is continuing. Where the department finds that the evidence is satisfactory, it may not make such a declaration.
- (8) "Operator" means a person engaged in mining operations, whether individually, jointly, or through subsidiaries, agents, employees, or contractors.
- (9) "Overburden" means the earth, rock, and other materials that lie above the natural deposit of minerals.
- (10) "Refuse" means all waste soil, rock, mineral, scrap, tailings, slimes, and other material directly connected with the mining, cleaning, and preparation of substances mined and includes all waste materials deposited on or in the permit area from other sources.
- (11) "Spoil bank" means a deposit of excavated overburden or refuse.
- (12) "Peak" means overburden removed from its natural position and deposited elsewhere in the shape of conical piles or projecting points.
- (13) "Ridge" means overburden removed from its natural position and deposited elsewhere in the shape of a long, narrow elevation.
- (14) "Reclamation" means the reasonable rehabilitation of the affected land for useful purposes and the protection of the natural resources of the surrounding area. Although both the need for and the practicability of reclamation control the type and degree of reclamation in a specific instance, the basic objective is to establish on a continuing basis the vegetative cover, soil stability, water conditions, and safety conditions appropriate to the area. Closure activities are a part of reclamation.
- (15) "Reclamation plan" means the operator's written proposal as required and approved by the department for reclamation of the affected land,

which includes but is not limited to:

- (a) proposed practices to protect adjacent surface resources;
- (b) specifications for surface gradient restoration, including sketches delineating slope angle, to a surface suitable for the proposed subsequent use of the land after reclamation is completed, and the proposed method of accomplishment;
- (c) manner and type of revegetation or other surface treatment of the affected areas;
- (d) method of prevention or elimination of conditions that are hazardous to animal or fish life in or adjacent to the area;
- (e) method of compliance with state air and water pollution laws:
- (f) proposed methods to limit significant adverse effects on adjacent surface water and groundwater resources;
- (g) proposed methods to limit significant adverse effects on significant cultural or historic sites;
- (h) method of rehabilitation of settling ponds;
- (i) method of control of contaminants and disposal of mining refuse;
- (j) method of restoration or establishment of stream channels and stream banks to a condition minimizing erosion, siltation, and other pollution;
- (k) maps and other supporting documents reasonably required by the department; and
- (I) a time schedule, including the anticipated years for completion of reclamation by segments, that meets the requirements of Section 48-20-90.
- (16) "Borrow pit" means an area from which soil or other unconsolidated materials are removed to be used, without further processing, for highway construction and maintenance.
- (17) "Land" includes submerged lands underlying a river, stream, lake, sound, or other body of water and specifically includes, among others, estuarine and tidal lands.
- (18) "Permitted land" means the affected land in addition to (a) lands identified for future mining to become affected land; (b) an undisturbed or buffer area that is or may become adjacent to the affected land.
- (19) "Exploration" means the act of breaking the surface soil to determine the location, quantity, or quality of a mineral deposit. Exploration includes, but is not limited to, drilling core and bore holes, trial open pits, open cuts, trenching, and tunneling for the purpose of extracting mineral samples.

- (20) "Explorer" means a person engaged in exploration activities, as defined in this section, whether individually, jointly, or through subsidiaries, agents, employees, or contractors.
- (21) "Operating permit" means a permit for mining activity that is issued to an operator by the department.
- (22) "Closure" means the act of rendering a mine facility or portion of a mine facility to an inoperative state that prevents the gradual or sudden release of contaminants that are harmful to the environment.

SECTION 48-20-50. Certificates of exploration.

A certificate of exploration issued by the department is required for exploration activities in an affected area of two acres or less and involving the development of open pits, trenches, open cuts, or tunneling. A certificate of exploration is not required for exploration activity on an area already covered by an operating permit or for (1) drilling core holes, (2) drilling bore holes, or (3) conducting geophysical and geochemical sampling and analysis.

An explorer engaging in exploration regulated pursuant to this section shall make a written application to the department for a certificate of exploration. The application must be on a form furnished by the department and must state fully the information requested. The applicant may be required to furnish other information as may be necessary to the department in order to enforce this chapter adequately. If the explorer does not receive notification of denial of the certificate of exploration within fifteen calendar days of the tendering of the application, the application is approved. If the certificate of exploration is denied, the department shall state the reasons, and the explorer must be given an additional thirty calendar days to either appeal the decision as set forth in Section 48-20-190 or modify its application for reconsideration by the department.

The application must be accompanied by a reclamation plan on forms furnished by the department. The department shall approve reclamation plans in accordance with Section 48-20-90.

Public notice and public hearing requirements of this chapter do not apply to an application for a certificate of exploration or the processing or granting of the certificate. The department shall treat the application for a certificate of exploration and the certificate, if any, and any material submitted with the application, as confidential trade secrets and proprietary business information of the applicant. The application and the certificate, if any, and any material submitted with the application is exempt from disclosure under the Freedom of Information Act and is not part of the public record.

Upon approval of an application for a certificate of exploration, the department shall require a performance bond or other security in an amount, and pursuant to requirements, set forth in Section 48-20-110.

An explorer engaging in exploration involving an affected area greater than two acres is required to obtain an operating permit in accordance with the procedures set forth in Sections 48-20-60 and 48-20-70.

SECTION 48-20-55. General permits for limited mining.

(A) The department may develop and implement general permits for the regulation of mining limited to excavations for topsoil or sand/clay fill material which do not require further processing. General permits developed by the department must contain, at a minimum, standard plans and specifications for environmental protection, storm water management, public health and safety protections, and reclamation of affected lands in

accordance with promulgated regulations.

(B) An applicant for a general permit where the total affected area is two acres or less may begin mining when the department receives a complete application for a general permit. Before an operator may conduct mining operations under a general permit for an affected area greater than two acres, he shall file an application with the department to determine eligibility. The department may require an individual operating permit pursuant to Sections 48-20-60 and 48-20-70 instead of issuing a general permit if necessary to ensure environmental protection or public safety.

SECTION 48-20-60. Operating permits generally.

No operator may engage in mining without having first obtained from the department an operating permit which covers the affected land and which has not been terminated, revoked, suspended for the period in question, or otherwise invalidated.

An operating permit may be modified to include land neighboring the affected or permitted land in accordance with procedures set forth in Section 48-20-80. A separate operating permit is required for each mining operation that is not on land neighboring a mining operation for which the operator has a valid permit.

No operating permit may be issued except in accordance with the procedures set forth in Section 48-20-70. No operating permit may be modified except in accordance with the procedures set forth in Section 48-20-80 or 48-20-150.

An appeal from the department's decision regarding an operating permit may be taken to the council, as provided by Section 48-20-190.

No operating permit becomes effective until the operator has deposited with the department an acceptable performance bond or other security pursuant to Section 40-20-110. If at any time the bond or other security, or any part of it, lapses for a reason other than a release by the department, and the lapsed bond or security is not replaced by the operator within thirty days after notice of the lapse, the operating permit to which it pertains must be suspended until such time as the reason for the suspension is remedied and written documentation of the remedy is provided to the department.

An operating permit must be granted and remain valid unless the operating permit terminates as set forth in this chapter or until revoked by the department under the provisions of Section 48-20-160. If the mining operation terminates and the reclamation required under the approved reclamation plan is completed, the permit terminates. Termination of an operating permit does not relieve the operator of any obligations which he has incurred under his approved reclamation plan or otherwise. Where the mining operation itself has terminated, no operating permit is required in order to carry out reclamation measures under the reclamation plan.

An operating permit may be suspended or revoked for cause pursuant to Section 48-20-160.

SECTION 48-20-70. Application for, and issuance of, operating permit.

An operator desiring to engage in mining shall make written application to the department for an operating permit. The application must be on a form furnished by the department and must state fully the called for information. The applicant may be required to furnish other information as may be necessary to the department in order to enforce this chapter adequately.

The application must be accompanied by a reclamation plan which meets the requirements of Section 48-20-90. No operating permit may be issued until the plan has been approved by the department pursuant to Section 48-20-90.

The application for an operating permit must be accompanied by a signed agreement, in a form specified by the department, that if a bond forfeiture is ordered pursuant to Section 48-20-170, the department and its representatives and its contractors may make whatever entries on the permitted land and take whatever actions necessary to carry out reclamation which the operator has failed to complete.

The department shall publish notice of an application for an operating permit or a substantial modification of an operating permit in a newspaper of general circulation in the area of the proposed mining activity and, to the extent practicable, shall notify the public of the application. The department shall afford all interested parties reasonable opportunity to submit data, views, or arguments orally or in writing regarding the proposed mining activity. Opportunity for public hearing must be granted if requested by ten persons or by a governmental subdivision or agency or by an association having not less than ten members and if the request for a hearing is based on sufficient technical reasons. The request for a public hearing must be made within fifteen calendar days from the latest date of public notice of an application. The department shall consider fully all written and oral submissions respecting the mining activity before final action by the department on the application for an operating permit.

The department shall grant or deny the operating permit requested as expeditiously as possible but in no event later than sixty calendar days after the application form and any supplemental information required has been filed with the department. Priority consideration must be given to applicants who submit evidence that the mining proposed is for supplying materials for highway maintenance or highway construction.

The department shall deny an operating permit upon finding that:

- (1) a requirement of this chapter or a regulation promulgated under it is to be violated by the proposed operation;
- (2) the operation will have undue adverse effects on wildlife or freshwater, estuarine, or marine fisheries;
- (3) the operation will violate standards of air quality, surface water quality, or groundwater quality which have been promulgated by the South Carolina Department of Health and Environmental Control;
- (4) the operation will constitute a substantial physical hazard to a neighboring dwelling house, school, church, hospital, commercial or industrial building, public road, or other public property;
- (5) the operation will have a significantly adverse effect on the purposes of a publicly-owned park, publicly-owned forest, or publicly-owned recreation area;
- (6) previous experience with similar operations indicates a substantial possibility that the operation will result in substantial deposits of sediment in stream beds or lakes, landslides, or acid water pollution; or
- (7) the operator has not corrected all violations which he may have committed under an operating permit or certificate of exploration and which resulted in:
- (a) revocation of his permit;

- (b) forfeiture of part or all of his bond or other security;
- (c) conviction of a misdemeanor under Section 48-20-230;
- (d) any other court order issued under Section 48-20-230; or
- (e) issuance of a notice of uncorrected violations.

In the absence of any such finding, an operating permit must be granted.

An operating permit issued must be conditioned expressly on compliance with all requirements of the approved reclamation plan for the operation and with further reasonable and appropriate requirements and safeguards of the department to assure that the operation complies fully with the requirements and objectives of this chapter. The conditions may include a requirement of visual screening, vegetative or otherwise, so as to screen the view of the operation from public highways, public parks, or residential areas, if the department finds the screening to be feasible and desirable. Violation of the conditions must be treated as a violation of this chapter and constitutes a basis for suspension or revocation of the operating permit.

An operator wishing modification of the terms and conditions of an operating permit or of the approved reclamation plan shall submit a request for modification in accordance with the provisions of Section 48-20-80.

If the department denies an application for an operating permit, it shall notify the operator in writing, stating the reasons for its denial and modifications in the application which would make it acceptable. The operator may modify his application or file an appeal, as provided in Section 48-20-190, but the appeal may not be accepted more than thirty days after notice of disapproval has been mailed to him at the address shown on his application.

Upon approval of an application, the department shall set the amount of the performance bond or other security which is to be required pursuant to Section 48-20-110. The operator shall have sixty days following the mailing of the notification in which to deposit the required bond or security with the department. The operating permit may not be issued until receipt of this deposit.

In addition to the applicant, all individuals and organizations requesting in writing to be notified of final action concerning an operating permit must be notified by the department. The time limits for taking appeal may not be extended because of the timing of notices sent pursuant to this paragraph.

When one operator succeeds to the interest of another in an uncompleted mining operation, by virtue of a sale, lease, assignment, or otherwise, the department may release the first operator from the duties imposed upon him by this chapter with reference to the operation and transfer the operating permit to the successor operator if both operators have complied with the requirements of this chapter and if the successor operator assumes the duties of the first operator with reference to reclamation of the land and posts a suitable bond or other security.

SECTION 48-20-80. Modifications of operating permit.

An operator engaged in mining under an operating permit may apply for modification of the permit. The application must be in writing upon forms furnished by the department and must state fully the called-for information. The applicant may be required to furnish other information as

may be necessary to the department to enforce this chapter adequately. It is not necessary to resubmit information which has not changed since the time of a prior application if the applicant states in writing that the information has not changed.

A modification under this section may affect the land area covered by the operating permit, the approved reclamation plan coupled with the operating permit, or other terms and conditions of the permit. An operating permit may be modified to include land neighboring the affected or permitted land but not other lands. The reclamation plan may be modified if the department determines that the modified plan fully meets the standards set forth in Section 48-20-90 and that the modifications are generally consistent with the basis for issuance of the original operating permit. Other terms and conditions may be modified only if the department determines that the permit as modified meets the requirements of Sections 48-20-60 and 48-20-70.

In lieu of a modification, an operator may apply for a new permit in the manner prescribed by Sections 48-20-60 and 48-20-70.

No modification of a permit becomes effective until required changes have been made in the performance bond or other security posted under the provisions of Section 48-20-110 to assure the performance of obligations assumed by the operator under the permit and reclamation plan.

SECTION 48-20-90. Reclamation plans.

An explorer shall submit with his application for a certificate of exploration or an operator shall submit with his application for an operating permit a proposed reclamation plan. The reclamation plan for an operating permit only must be furnished to the local soil and water conservation district in which the mining operation is to be conducted. The plan must include as a minimum each of the elements specified in the definition of "reclamation plan" in Section 48-20-40 and other information required by the department. The reclamation plan must provide that reclamation activities, particularly those relating to control of erosion, to the extent feasible, must be conducted simultaneously with mining operations and be initiated at the earliest practicable time after completion or termination of mining on a segment of the permitted land. The plan must provide that reclamation activities must be completed within two years after completion or termination of mining on each segment of the area for which an operating permit is requested unless a longer period specifically is permitted by the department.

The department may approve, approve subject to stated modifications, or reject the plan. The department shall approve a reclamation plan as submitted or modified, only if it finds that it adequately provides for those actions necessary to achieve the purposes and requirements of this chapter and that the plan meets the following minimum standards:

- (1) The final slopes in all excavations in soil, sand, gravel, and other unconsolidated materials are to be at such an angle as to minimize the possibility of slides and be consistent with the future use of the land.
- (2) Provisions for safety to persons and to adjoining property must be provided in all excavations in rock. Safety provisions may be required for excavations in unconsolidated materials that are adjacent to residential developments, schools, churches, hospitals, and commercial and industrial buildings.
- (3) In open cast mining operations, all overburden and spoil must be left in a configuration which is in accordance with accepted conservation practices and which is suitable for the proposed subsequent use of the land.
- (4) In no event may a provision of this section be construed to allow small pools of water that are, or are likely to become, noxious, or foul to collect or remain on the mined area. Suitable drainage ditches or conduits must be constructed or installed to avoid those conditions. Lakes, ponds, and marsh lands are to be considered adequately reclaimed lands when approved by the department.

(5) The type of vegetative cover and methods of its establishment must be specified and in every case conform to accepted and recommended agronomic and reforestation restoration practices as established by the South Carolina Agricultural Experiment Station of Clemson University and the South Carolina Forestry Commission. Advice and technical assistance may be obtained through the state soil and water conservation districts.

The department may approve a reclamation plan despite the fact that the plan does not provide for reclamation treatment of every portion of the affected land if the department finds that because of special conditions the treatment is not feasible for particular areas and that the plan takes all practical steps to minimize the extent of the areas.

An operator shall have the right to substitute an area mined in the past for an area presently being mined with the approval of the department.

SECTION 48-20-100. Authority to assess and collect fees.

The department may assess and collect fees to assist with the costs of administering the provisions of this chapter.

All appropriate fees must be received by the department before processing and approving an application as referenced in this chapter.

SECTION 48-20-110. Bonding or other security requirements.

Each applicant for a certificate of exploration, and each applicant for an operating permit, shall file with the department, upon approval of the application, and maintain in force a bond in an amount set forth in this section. All bonds must be in favor of the State of South Carolina, executed by a surety approved by the Department of Insurance in the amount set forth in this section. The bond must be continuous in nature and must remain in force until canceled by the surety. Cancellation by the surety is effectuated only upon sixty days' written notice to the department and to the operator.

The applicant may file a separate bond for each certificate of exploration or operating permit or may file a blanket bond covering all exploration activities or mining operations within the State for which he holds certificates or permits. The amount of each bond required for a certificate of exploration must be two thousand, five hundred dollars. The amount of each bond for operating permits must be based upon the area of affected land to be reclaimed under the approved reclamation plan to which it pertains, less any area whose reclamation has been completed and released from coverage by the department pursuant to Section 48-20-130. If the area totals less than ten acres, the bond must be ten thousand dollars. If it is ten acres or more but less than fifteen acres, the bond must be fifteen thousand dollars. If it is fifteen or more acres the bond must be twenty-five thousand dollars. If an area totals more than twenty-five acres, the department may require a bond in excess of twenty-five thousand dollars if a greater bond is necessary to insure reclamation as provided by this chapter.

All mining operations must have the reclamation bond amounts in effect by July 1, 1995, or before if the mining permit is modified to increase the affected land.

The bond must be conditioned upon the faithful performance of the requirements set forth in this chapter and of the regulations adopted pursuant to it. Liability under the bond must be maintained as long as reclamation is not completed in compliance with the approved reclamation plan unless released only upon written notification from the department. Notification must be given upon completion of compliance or acceptance by the department of a substitute bond. In no event may the liability of the surety exceed the amount of surety bond required by this section.

In lieu of the surety bond required by this section, the explorer or operator may file with the department a cash deposit, registered securities acceptable to the department, an assignment of a savings account in a South Carolina bank, or other securities acceptable to the department on an assignment form prescribed by the department.

If the license to do business in South Carolina of a surety upon a bond filed pursuant to this chapter is suspended or revoked, the operator, within sixty days after receiving notice, shall substitute for the surety a good and sufficient corporate surety authorized to do business in this State or file with the department one of the alternative forms of surety prescribed in this section. Upon failure of the operator to make the substitution, the permit must be suspended until the substitute bond is posted and written documentation is provided to the department.

SECTION 48-20-120. Annual report of operator; operating fee; late penalty.

Within thirty days following the end of the state fiscal year, and each year thereafter until reclamation is completed and approved, the operator shall file a report of activities completed during the preceding year for each permitted mining operation on a form prescribed by the department which at a minimum:

- (1) identifies the mine, the operator, and the permit number;
- (2) states acreage disturbed by mining in the last twelve-month period;
- (3) states and describes the amount and type of reclamation by segments carried out in the last twelve-month period;
- (4) estimates acreage to be newly disturbed by mining in the next twelve-month period;
- (5) states and describes the amount and type of reclamation by segments, expected to be carried out in the next twelve-month period;
- (6) provides maps as specifically requested by the department.

As part of the annual report, the department may assess and collect an annual operating fee for each mine. The department may assess and collect a penalty following written notification to the operator by the department for each annual report and annual operating fee not filed within thirty days following the end of the state fiscal year. If the required operating fee and the annual report are not filed by December thirty-first following the end of the state fiscal year, the department shall give written notice to the operator and then initiate permit revocation proceedings in accordance with the provisions of Section 48-20-160.

SECTION 48-20-130. Inspections; notice of deficiencies.

Upon receipt of the operator's annual report or report of completion of reclamation and at any other reasonable time the department may elect, the department shall inspect the permit area to determine if the operator has complied with the reclamation plan, the requirements of this chapter, regulations promulgated by its authority, and the terms and conditions of his permit. Accredited representatives of the department at all reasonable times may enter upon the land subject to the certificate of exploration or operating permit for the purpose of making the inspection.

The operator shall proceed with reclamation as scheduled in the approved reclamation plan. Following its inspection, the department shall give written notice to the operator of any deficiencies noted. The operator shall commence action within thirty days to rectify these deficiencies and

proceed diligently until they have been corrected. The department may extend performance periods referred to in this section and in Section 48-20-90 for delays clearly beyond the operator's control but only in cases where the department finds that the operator is making every reasonable effort to comply. In the absence of corrective action by the operator to rectify deficiencies where previous written notice has been given, the department may issue a notice of uncorrected deficiencies or violations.

Upon completion of reclamation of an area of affected land, the operator shall notify the department. The department shall make an inspection of the area and, if it finds that reclamation has been properly completed, it shall notify the operator in writing and release him from further obligations regarding the affected land. At the same time, it shall release all of the appropriate portion of a performance bond or other security which he has posted under Section 48-20-110.

If at any time the department finds that reclamation of the permit area is not proceeding in accordance with the reclamation plan and that the operator has failed within thirty days, or any extension of that date after receiving a notice of uncorrected deficiencies to commence corrective action, or if the department finds that reclamation has not been completed properly in conformance with the reclamation plan within two years, or longer if authorized by the department, after termination of mining on any segment of the permit area, the operator shall show cause why it has not complied, and, upon just cause given, an extension of time to comply must be granted. If just cause is not demonstrated, the department shall initiate forfeiture proceedings against the bonds or other security filed by the operator under Section 48-20-170. The failure constitutes grounds for suspension or revocation of the operator's permit as provided in Section 48-20-160.

SECTION 48-20-140. Administrative fee for deficiencies.

The department may assess an administrative fee as part of the issuance of notices of uncorrected deficiencies or violations. A fee of two hundred fifty dollars may be assessed for the first notice of uncorrected deficiencies or violations with subsequent notices for the same deficiencies assessed at five hundred dollars a notice. The operator may appeal the issuance of the notice of uncorrected deficiencies and violations and administrative fees as provided in Section 48-20-190.

SECTION 48-20-150. Modification of reclamation plans.

If at any time it appears to the department that the activities under the reclamation plan and other terms and conditions of the operating permit are failing to achieve the purposes and requirements of this chapter, it shall give the operator written notice of that fact, of its intention to modify the reclamation plan and other terms and conditions of the permit in a stated manner, and of the operator's right to a hearing on the proposed modification at a stated time and place. The date for the hearing may not be less than thirty nor more than sixty days after the date of the notice unless the department and the operator mutually agree on another date. Following the hearing, the department may modify the reclamation plan and other terms and conditions of the permit in the manner stated in the notice or in such other manner it considers appropriate in view of the evidence submitted at the hearing.

SECTION 48-20-160. Notice of violations; hearings; suspension or revocation of permit.

(A) If the department believes a violation of this chapter, a regulation promulgated by it, or the terms and conditions of a permit, including the approved reclamation plan, has taken place, it shall serve written notice of that fact upon the operator, specifying the facts constituting the apparent violation and informing the operator of his right to a hearing at a stated time and place. The date for the hearing may not be less than thirty nor more than sixty days after the date of the notice, unless the department and the operator mutually agree on another date. The operator may appear at the hearing, either personally or through counsel, and present evidence he desires in order to prove that no violation has taken place or exists. If the operator or his representative does not appear at the hearing, or if the department following the hearing finds

that there has been a violation, the department may suspend the permit until the violation is corrected or may revoke the permit where the violation appears to be wilful.

- (B) The effective date of a suspension or revocation is sixty days following the date of the decision. An appeal to the council pursuant to Section 48-20-190 stays the effective date until the council's decision. A further appeal to the Administrative Law Court pursuant to Section 48-20-200 stays the effective date until the date of the administrative law judge's final decision. If the department finds at the time of its initial decision that a delay in correcting a violation may result in imminent peril to life or danger to property or to the environment, it shall initiate promptly a proceeding for injunctive relief pursuant to Section 48-20-230. The pendency of an appeal from a suspension or revocation of a permit has no effect upon the action.
- (C) An operator whose operating permit is suspended or revoked shall be denied a new permit or a reinstatement of the suspended permit to engage in mining until he gives evidence satisfactory to the department of his ability and intent to comply fully with the provisions of this chapter, regulations promulgated by it, and the terms and conditions of his permit, including the approved reclamation plan, and that he has corrected satisfactorily all deficiencies or previous violations.
- (D) A general permit, as provided for in Section 48-20-55, may be revoked or suspended if the operator is cited for violations of this chapter, a regulation promulgated by it, or the terms and conditions of that general permit. If this authority is suspended or revoked and mining is ordered to be stopped pursuant to Section 48-20-220, the operator whose eligibility to mine under a general permit that has been suspended or revoked shall be denied further eligibility under that or other general permits or an individual operation permit until satisfactory evidence is presented to the department that the operation intends to comply fully with the provisions of this chapter, regulations promulgated under it, and the terms and conditions of his permit, including satisfactorily correcting all deficiencies or previous violations.

SECTION 48-20-170. Bond or security forfeiture proceedings.

Whenever the department determines the necessity of a bond forfeiture under the provisions of Section 48-20-130, or whenever it revokes an operating permit under the provisions of Section 48-20-160, it shall request the Attorney General to initiate forfeiture proceedings against the bond or other security filed by the operator or explorer under Section 48-20-110, but no such request may be made for forfeiture of a bond until the surety has been given written notice of the violation and a reasonable opportunity of at least sixty days to take corrective action. The proceedings must be brought in the name of the State of South Carolina. In the proceedings, the face amount of the bond or other security, less any amount released by the department pursuant to Section 48-20-130, must be treated as liquidated damages and subject to forfeiture. All funds collected as a result of the proceedings must be placed in a special fund and used by the department to carry out, to the extent possible, and in a cost-effective manner, the reclamation measures which the operator or explorer has failed to complete. Funds remaining after the reclamation plan has been completed must be refunded to the surety. If the amount of the bond or other security filed pursuant to this section proves to be insufficient to complete the required reclamation pursuant to the approved reclamation plan, the operator or explorer is liable to the department for any excess above the amount of the bond or other security which may be required to defray the cost of completing the required reclamation.

SECTION 48-20-180. Manner of giving written notice.

Whenever written notice must be given by the department, it must be mailed by registered or certified mail to the permanent address of the operator set forth in his most recent application for an operating permit or for a modification of a permit. No other notice is required.

SECTION 48-20-190. Appeals of decisions or determinations of department.

An applicant for a certificate of exploration or operating permit or a person who is aggrieved and is directly affected by the permit may appeal to the council from a decision or determination of the department issuing, refusing, modifying, suspending, revoking, or terminating a certificate of exploration or operating permit or reclamation plan, or imposing a term or condition on the certificate, permit, or reclamation plan. An explorer or operator may appeal to the council from a decision or determination of the department issuing a notice of deficiencies or violations and administrative fees or assessing civil penalties. The person taking the appeal within thirty days after the department's decision shall give written notice to the council through its secretary that he desires to appeal and file a copy of the notice with the department at the same time. If more than one appeal regarding the same certificate, permit, or reclamation plan is filed with the council within the thirty-day period following the decision by the department, the council may consolidate the hearing and review of the appeals by the council. The chairman of the council shall fix a reasonable time, not less than twenty nor more than forty days from the receipt of the appeal, and place for a hearing, giving reasonable notice to the applicant, appellant, and to the department. The council, or a committee of the council designated by the council's rules of procedure, or if agreed by appellant, the council, the operator, and the department, a hearing panel consisting of one or more individuals shall conduct a full and complete hearing as to the matters in controversy, and within thirty days shall give a written decision setting forth its findings of fact and its conclusions. The council or its designated committee or the hearing panel may affirm, affirm with modifications, or overrule the decision of the department and may direct the department to take action required to effectuate its decision. A further appeal may be taken from the appellate

SECTION 48-20-200. Appeals of decision of council, its committee or hearing panel; appeal of department's refusal to release bond or security.

An appeal to the Administrative Law Court as provided in Sections 1-23-380(B) and 1-23-600(D) may be taken from any decision of the council, or its designated committee or the hearing panel. An appeal also may lie against the department's refusal to release part or all of a bond or other security posted pursuant to Section 48-20-110 as provided in Section 48-20-130.

SECTION 48-20-210. Department to promulgate regulations.

The department shall promulgate regulations to implement the provisions of this chapter as provided by Article 1, Chapter 23 of Title 1. The regulations must set forth the duties of operators applying for certificates of exploration and operating permits under this chapter and also those of the department director, his subordinates, or designees.

SECTION 48-20-220. Cease and desist orders; restraining orders or injunctions; civil penalties.

Whenever an explorer engages in exploration without obtaining a certificate of exploration, or whenever an operator engages in mining without obtaining a valid operating permit or conducts mining outside of the permitted land or does not comply with the approved reclamation plan and schedule following termination of mining, the department may issue an immediate cease and desist order. A cease and desist order also may be issued against an operator who is engaged in mining before his receipt of written notification from the department that he is eligible to mine under the authority of a general permit for areas over two acres, or for not complying with the requirements of the general permit during mining. In addition to the issuance of the order, the department may seek a restraining order or injunction pursuant to Section 48-20-230.

Whenever an explorer engages in exploration without obtaining a certificate of exploration, or whenever an operator conducts mining without a valid operating permit or conducts mining outside of the permitted land or does not comply with the approved reclamation plan and schedule following termination of mining, the explorer or operator may be subject to a civil penalty assessed by the department of not more than one thousand dollars for each offense. Civil penalties may be levied against an operator who is engaged in mining before his receipt of written notification from the department that he is eligible to mine under the authority of a general permit or for not complying with the requirements of the general permit during mining. Each day of continued violation after issuance of a cease and desist order may be considered a further and

separate offense. The severity of the violation, the need to deter future violations, and the magnitude of potential or actual gains resulting from the violation must be considered in determining the amount of the civil penalty. Orders and penalties issued pursuant to this section may be appealed under Section 48-20-190.

SECTION 48-20-230. Criminal penalties; authority of department to institute other actions or proceedings.

In addition to other penalties provided by this chapter, an operator who engages in mining in wilful violation of the provisions of this chapter or of regulations promulgated under it or who wilfully misrepresents a fact in an action taken pursuant to this chapter or wilfully gives false information in an application or report required by this chapter is guilty of a misdemeanor and, upon conviction, must be fined not less than one hundred dollars nor more than one thousand dollars for each offense. Each day of continued violation after written notification is a separate offense.

In addition to other remedies, the department may institute an appropriate action or proceedings to prevent, restrain, correct, or abate a violation of this chapter or a regulation promulgated under this chapter.

SECTION 48-20-240. Disposition of fees and civil penalties.

All fees and civil penalties collected under the provisions of this chapter must be deposited in the general fund through the State Treasurer. Fee revenue attributable to increased or additional fees imposed pursuant to this chapter after May 1, 2003, must be retained and expended for the department's mining and reclamation program. Funds retained pursuant to this section must be used specifically to provide additional staff for the mining and reclamation program and to provide educational and training assistance to the mining industry in South Carolina.

SECTION 48-20-250. Affect of chapter on local zoning regulations or ordinances.

No provision of this chapter supersedes, affects, or prevents the enforcement of a zoning regulation or ordinance within the jurisdiction of an incorporated municipality or county or by an agency or department of this State, except when a provision of the regulation or ordinance is in direct conflict with this chapter.

SECTION 48-20-260. Chapter not to restrict or impair private right of action.

No provisions of this chapter may restrict or impair the right of a private or public person to bring a legal or equitable action for damages or redress against nuisances or hazards.

SECTION 48-20-270. Chapter not to impose liability on State for damages.

Nothing contained in this chapter and no action or failure to act under this chapter may be construed to impose liability on the State, department, district, or an agency, officer, or employee of the State for the recovery of damages caused by the action or failure to act.

SECTION 48-20-280. Application of chapter to Department of Transportation; application to mining on federal lands.

The provisions of this chapter do not apply to those activities of the Department of Transportation, nor of a person acting under contract with the department, on highway rights-of-way or borrow pits maintained solely in connection with the construction, repair, and maintenance of the

public road systems of the State. This exemption does not become effective until the department has adopted reclamation standards applying to those activities and the standards have been approved by the council. At the discretion of the department, the provisions of this chapter may apply to mining on federal lands.

SECTION 48-20-290. Authority of department to accept grants, to engage in research, and cooperate with governmental entities.

The department, with the approval of the Governor, and in order to accomplish any of the purposes of the department, may apply for, accept, and expend grants from the federal government and its agencies and from a foundation, corporation, association, or individual may enter into contracts relating to the grants, and may comply with the terms, conditions, and limitations of the grants or contracts. The department may engage in appropriate research to further its ability to accomplish its purposes under this chapter and may contract for the research to be done by others. The department may cooperate with the federal, state, or a local government or agency of this or any other state in mutual programs to improve the enforcement of this chapter or to accomplish its purposes more successfully.

SECTION 48-20-300. Lands to be included in reclamation plans.

All lands mined subsequent to July 1, 1974, must be included in a reclamation plan.

SECTION 48-20-310. Exceptions to civil penalty provisions.

The civil penalties imposed upon certain violations of this chapter, including failure to act, do not include a violation which was caused by an act of God, war, strike, riot, or other catastrophe when negligence on the part of the violator was not the proximate cause.

LPITS@http://www.scstatehouse.net

Legislative Printing, Information and Technology Systems http://www.scstatehouse.net